

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**RUSSEL RAFAEL WHITEHEAD,  
# 01909111,**

**Petitioner,**

**v.**

**LORIE DAVIS, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Div.,  
Respondent.**

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**CIVIL NO. 3:16-CV-1580-N-BK**

**AMENDED ORDER ACCEPTING FINDINGS, CONCLUSIONS AND  
RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court is Petitioner's January 23, 2018 objections to the findings, conclusions and recommendations of the United States magistrate judge. Doc. 37.

By order filed December 4, 2017, the Court accepted the findings, conclusions and recommendations of the magistrate judge and entered judgment denying the petition for writ of habeas corpus, not having seen Petitioner's objections. Subsequently, based on the filing of Petitioner's correspondence and motion to alter or amend the judgment, the Court granted Petitioner an extension of time to file his objections, which he claimed were handed to prison officials for mailing, but were never received. The Court now considers the objections.

After a *de novo* review of those portions of the proposed findings and recommendation to which objection was made, the Court **OVERRULES** Petitioner's Objections. Accordingly, the petition for writ of habeas corpus under 28 U.S.C. § 2254 is **DENIED**.

Petitioner's motion to alter or amend the Court's judgment under Fed. R. Civ. P. 59(e) is **GRANTED** based on the filing of Petitioner's objections, and his motion to appoint counsel to resolve the Rule 59(e) motion is **DENIED AS MOOT**. Doc. 32; Doc. 34.

Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing Sections 2254 and 2255 Proceedings in the United States District Court, and 28 U.S.C. § 2253(c), the Court **DENIES** a certificate of appealability. The Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions and Recommendation filed in this case in support of its finding that the petitioner has failed to show (1) that reasonable jurists would find this Court's "assessment of the constitutional claims debatable or wrong," or (2) that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" and "debatable whether [this Court] was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).<sup>1</sup>

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<sup>1</sup> Rule 11 of the Rules Governing §§ 2254 and 2255 Proceedings reads as follows:

**(a) Certificate of Appealability.** The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under [Federal Rule of Appellate Procedure 22](#). A motion to reconsider a denial does not extend the time to appeal.

**(b) Time to Appeal.** [Federal Rule of Appellate Procedure 4\(a\)](#) governs the time to appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.

If petitioner files a notice of appeal,

(X) petitioner may proceed *in forma pauperis* on appeal.

( ) petitioner must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis*.

SO ORDERED February 20, 2018.

  
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UNITED STATES DISTRICT JUDGE